



Seattle Police Department

DIRECTIVE



July 22, 2011

D 11-042

-Marijuana Update-

A Comprehensive Guide to Marijuana Enforcement & Medical Marijuana

This Directive contains the following information:

- Marijuana Update – Message from the Chief
- Marijuana Enforcement Procedures and Preliminary Investigations Summary
- Manual Revision to DP&P 15150 Narcotics

The following items are attached to this Directive:

- Final Bill Report – E2SSB 5073 (concerning the medical use of cannabis)
- Marijuana Grow Investigative Warrant Guidelines
- The *Preliminary Investigations Summary* Use Instructions

Marijuana Update – Message from the Chief:

Effective Friday, July 22nd, 2011, there will be some changes to the State Medical Marijuana laws. The text of the law is attached to this message. A revised medical marijuana search warrant guideline is also attached as a reminder on appropriate actions when contemplating a marijuana search warrant, as well as a new directive on Marijuana Enforcement Procedures.

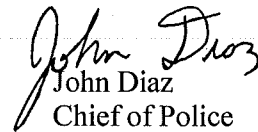
Much of the existing medical marijuana laws remain in effect to include rules that limit the amount of marijuana plants and dried marijuana that any qualified patient and/or designated provider can possess. Additions to the law allow for the existence of 'collective gardens' where no more than 10 qualified patients can grow medicinal marijuana. Each person is limited to no more than 15 plants per person per garden, and no community garden can have more than 45 plants and 72 ounces of dried product. The changes to the law also prohibit medical marijuana dispensaries.

Many jurisdictions in the State have differing views on marijuana in general, and medical marijuana specifically. The voters of Seattle approved an initiative that makes the enforcement of marijuana in small amounts for personal adult use the lowest enforcement priority in the City limits. State law continues to ban non-medicinal marijuana, and controls the way that medical marijuana can be grown or provided. Federal law does not recognize any legal use of marijuana, regardless of the use, and classifies it as a schedule I drug.

These competing and inconsistent laws along with the varying interpretations by the elected officials and prosecutors combined with the different expectations of the public puts the police officer on the street in a very difficult position when dealing with marijuana. As a result, officers will be guided by the following marijuana related issues:

- Public safety and officer safety will be the priority of any response to marijuana related incidents.
- The voters in Seattle have clearly stated that small amounts of marijuana for adult personal use will be the lowest enforcement priority.
- The use and/or possession of medical marijuana will be allowed if it is in compliance with State law.
- When encountering marijuana, if there is any doubt about the correct course of action, employees must contact their supervisor and/or the Narcotics Section for clarification.

Each event/incident involving marijuana will bring its own independent fact pattern and present the officer with a unique set of circumstances. Unless there are emergent issues that accompany the marijuana incident, officers and detectives will approach the investigation with care.


John Diaz
Chief of Police

Marijuana Enforcement Procedures & Preliminary Investigations Summary:

In 2008 voters passed Initiative 75 and in 2010 the Seattle City Council enacted Ordinance #121509 designating misdemeanor marijuana enforcement to be the lowest priority of the City Attorney's Office and the Seattle Police Department. In response to this ordinance future misdemeanor marijuana possession charge recommendations will only be submitted when a significant public safety issue needs to be addressed or if the possession/use was intimately tied with another misdemeanor criminal offense, such as DUI, etc. Felony investigations are not impacted by Ordinance #121509 and will continue to be investigated under current state law and department procedure.

As a result of small amounts of marijuana that is used for adult personal use being designated as the 'lowest enforcement priority', by the voters, the Council and the City Attorney. Department employees will investigate marijuana related incidents when there is evidence of:

- "Non-medical" manufacture, or intent to manufacture, or intent to deliver, where evidence exists indicates the marijuana is intended for sale, as defined in RCW 69.50.401.
- Physical control of a vehicle when under the influence of marijuana as defined in RCW 46.61.502 and SMC 11.56.020, or vehicular assault/homicide while under the influence of marijuana as defined in RCW 46.61.520 and .522.
- Any juvenile in possession of marijuana.

Police officers will not ignore any contraband, including marijuana. Medical marijuana will be handled in compliance with Department protocol, policy and procedure. If an employee comes across any other marijuana, they are to follow evidentiary policy and submit it into evidence. If it is a small amount that appears to be for personal use by an adult, the officer should not request charges.

Any seizure of contraband, including marijuana, when seized, will be documented in a *General Offense Report* and entered into evidence for either evidence or destruction.

Future marijuana possession charges will only be considered by the City Attorney's Office if the charge recommendation is clearly articulated in (1) the officer's *G.O. Report* or (2) the detective's *Follow-Up Report* (CIR). The only accepted manner for submitting *G.O. Report* marijuana charge recommendations to the City Attorney is via the new Versaterm *Preliminary Investigations Summary*. Summaries are not required if a detective's *Follow-Up Report* (CIR) is being completed. The *Preliminary Investigations Summary* Use Instructions are attached to this Directive.

When responding to citizen complaints of simple marijuana possession, responding officers should consider the totality of the circumstances when considering the course of action, including the direction of the voters that determined marijuana to be the lowest enforcement priority. Refer to DP&P 15.150 VIII.A.2.a. (Medical Marijuana Act).

G.O. Reports are still required for all drug enforcement actions whether charges are being requested or not. Marijuana evidence will continue to be submitted to the Evidence Unit for disposal per SPD Policy & Procedure.

Manual Revision to DP&P 15150 Narcotics:

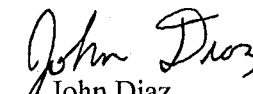
DP&P section 15.150 (Preliminary Investigations-Narcotics) has been revised to address recent legislation passed in Olympia, related to medical marijuana.

Effective on July 22nd, 2011, Senate Bill 5073 (a) permits cities to regulate and license the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction, and, (b) permits collective gardens by qualified patients and/or their designated providers.

SB 5073 limitations for Collective Gardens:

- No more than 10 qualifying patients (for 1 garden).
- No more than 15 plants per patient to a maximum of 45 plants (per garden).
- No more than 24 ounces per patient to a maximum of 72 ounces of harvested/usable marijuana (per garden).
- Qualifying patient documentation must be on the premises.
- No delivery to non-participating patients.
- Qualifying patients share responsibility (for the garden).

An excerpt from DP&P 15.150Narcotics (paragraph VIII - Medical Marijuana) begins on page 5 of this Directive. The added (or revised) language is underlined.


John Diaz
Chief of Police

Excerpt from DP&P 15.150 – Narcotics (paragraph VIII revised)

VIII. Medical Marijuana Act

- A. The purpose of this policy section is to assist police officers and supervisors with the investigation of possession and/or manufacturing of marijuana in cases when people assert that they are either a medical marijuana patient or a designated provider. This type of investigation will involve determining if offenders are in compliance with the definition of “sixty (60) day supply” of medical marijuana as well as the quantity of marijuana that should be seized for various purposes (field testing, evidence for trial, and destruction).
1. This policy does not invalidate the detention or the arrest of a person based either on a warrant or probable cause, or on-view violations of any criminal law. Furthermore, case law states that a suspect’s production of a document purporting to be a marijuana use authorization does not prohibit further investigation by police officers who have probable cause to search the suspect’s home when they smelled the odor of marijuana. (State v. Fry, 142 Wash.App.456, 174 P3rd.1258).
 2. SMC 12A.20.060 states that the Seattle Police Department and the City Attorney’s Office shall make the investigation, arrest and prosecution of marijuana offenses the City’s lowest law enforcement priority, where the marijuana was intended for adult personal use. In addition, the Seattle Police Department is sensitive to the fact that some medical marijuana patients and designated providers may have difficulty obtaining marijuana for medicinal use. Although the Seattle Police Department is required to enforce the Medical Use of Marijuana Act and its subsequent amendments, this does not prohibit the police department from exercising some discretion while investigating these cases.
 - a. In each case, a responding supervisor should consider the totality of the circumstances when considering a course of action. The supervisor’s decision to take action or not should be weighed in favor of keeping the community safe. Factors to consider may include:
 - (1) An apparent “for profit” operation.
 - (2) Presence of weapons.
 - (3) Theft of electrical power.
 - (4) Other illegal drugs at the premise.
 - (5) Record of citizen complaint and/or nuisance behavior consistent with narcotics trafficking.
 - (6) Presence of children.
 - (7) Environmental concerns.
 - (8) Violent crime or other demonstrated dangers to the community.
- B. The Enforcement Policy for the Washington State Medical Marijuana Act (Initiative 692) is predicated on state law. In 2008, the Washington Department of Health clarified the

law by adopting a rule, which defined a sixty (60) day supply of marijuana for qualifying patients with certain terminal or debilitating illnesses, who are under the care of a physician. The law also protects a qualifying patient's designated provider of marijuana.

1. The sixty (60) day supply is defined by law as no more than twenty-four (24) ounces of usable marijuana (684 grams) and no more than fifteen (15) plants.
 - a. Usable marijuana is defined as "the dried leaves and flowers of the Cannabis plant Moraceae" and does not include "stems, stalks, seeds and roots".
 - b. A "plant" is defined as "any marijuana plant in any stage of growth".
 2. Collective Gardens
 - a. Up to 10 qualifying patients can grow 45 plants and have 72 ounces of usable cannabis at a collective garden. The law enables cities to license, zone and impose health and safety requirements.
- C. When you have detained someone for possession of marijuana and/or if during a search, a person asserts that they are a qualifying medical marijuana patient or designated provider, or you are at a collective garden, then;
1. Call for a supervisor to respond to the scene. The responding supervisor shall review the circumstances and then consult a Narcotics Section supervisor for further guidance. Both supervisors will notify their respective chains of command.
 2. If it is determined that a search warrant affidavit should be prepared, then the "Marijuana Grow Investigative Guidelines" shall be closely followed.
 3. Advise the person of their Miranda Rights. Ensure that they understand their rights and the reason for your advisement. (Although it is a low priority for the City of Seattle, "possession of marijuana" remains a federal crime and non-medicinal use remains a crime under Washington State law).
 4. Require proof of identity, such as a Washington State Driver's License or Identification Card.
 5. **Qualifying patients** must carry their valid documentation with them whenever they possess or use medical marijuana. Valid documentation consists of two items:
 - a. Their physician's authorization, and;
 - b. Proof of their identity, such as a Washington State Driver's License or Identification Card.
 6. If a person asserts that they are a **designated provider**, the person must be 18 years of age or older and the designated provider must carry:
 - a. A copy of the patient's designation.
 - b. A copy of the patient's physician authorization, and;
 - c. Proof of identity whenever he or she is growing, obtaining, or in possession of medical marijuana, to be presented to law enforcement upon request.

7. If a person asserts that they are **both a qualifying patient and a designated provider**, they are required to have the documentation for both (3 & 4 above).
8. Attempt to document the person's identity either as a qualifying patient or designated provider. If possible, photograph or photocopy the person's identification and medical authorization. Originals must be returned to the person. Only in the case of stolen documents or obvious forgeries should the originals be placed in evidence.
9. The Office of the King County Prosecuting Attorney does not intend to prosecute individuals who are truly ill. While some of these individuals will have the paperwork to show compliance with the affirmative defense of RCW 69.51A, some will not. Prosecutors are not likely to charge medically ill people who have reasonably tried but failed to have their medical marijuana paperwork in order.

D. Apparent Compliance with the Law

1. Possession of Medical Marijuana

- a. If the designated provider or patient asserts protection under the Medical Marijuana Act and appears to possess only a sixty (60) day supply of marijuana, use the following guidelines:

- (1) Collect a 1-gram sample, field test it, and place it into evidence.
- (2) Make a note if the person claims medical marijuana protection but has no documentation; share this with follow-up detectives and the prosecutor or city attorney.
- (3) Complete a *General Offense Report* and forward a copy to the Narcotics Section.
- (4) Advise the suspect that it is a misdemeanor to use or display medical marijuana in a manner or place that is open to the public and note such advice in the *General Offense Report*.

- b. Dual Coverage Under the Statute.

- (1) If a qualifying patient also asserts that he/she is also a designated provider to one other qualifying patient, and can provide the name and contact information of the other qualifying patient, the sixty-day supply of marijuana should be doubled to 48 ounces (1,268 grams) of usable marijuana and no more than thirty (30) plants. However, if the patient cannot supply the identification information of the other patient, the patient/provider will only be provided with a sixty-day supply for his/her personal use.

2. Medical Marijuana Grow Operation (that is not a Collective Garden)

- a. If the designated provider or patient asserts protection under the Medical Marijuana Act and appears to possess only a sixty (60) day supply of marijuana, use the following guidelines:

- (1) Photograph the entire quantity of marijuana to illustrate the amount, size of plants, paraphernalia, and any other detail related to the size of the "grow".
 - (2) Include a measurement device in the photos to illustrate the approximate size.
 - (3) Count the number of plants and note all equipment used for growing, harvesting, packaging or using marijuana.
 - (4) Collect a 1-gram sample, field test it, and place it into evidence.
 - (5) Complete a *General Offense Report* and forward a copy to the Narcotics Section.
 - (6) Make a note if the person claims medical marijuana protection but has no documentation; share this with follow-up detectives and the county prosecutor or city attorney.
 - (7) Advise the suspect that it is a misdemeanor to use or display medical marijuana in a manner or place that is open to the public and note such advice in the *General Offense Report*.
 - (8) Inform the patient or designated provider that they should review the Washington State Medical Marijuana Act and obtain the required qualifying documents if they were unable to produce them.
- b. Dual Coverage Under the Statute.
- (1) If a qualifying patient also asserts that he/she is also a designated provider to one other qualifying patient, and can provide the name and contact information of the other qualifying patient, the sixty-day supply of marijuana should be doubled to 48 ounces (1,268 grams) of usable marijuana and no more than thirty (30) plants. However, if the patient cannot supply the identification information of the other patient, the patient/provider will only be provided with a sixty-day supply for his/her personal use.
3. Collective Garden
- a. If the qualifying patient or designated provider asserts protection under the Medical Marijuana Act and appears to possess the authorized supply of marijuana, use the following guidelines:
 - b. Photograph the entire quantity of marijuana to illustrate the amount, size of plants, paraphernalia, and any other detail related to the size of the collective garden.
 - c. Include a measurement device in the photos to illustrate the approximate size.
 - d. Count the number of plants and note all equipment used for growing, harvesting, packaging or using marijuana.

- e. Collect a 1-gram sample, field test it, and place it into evidence.
- f. Complete a *General Offense Report* and forward a copy to the Narcotics Section.
- g. Make a note if the person claims medical marijuana protection but has no documentation; share this with follow-up detectives and the county prosecutor or city attorney.
- h. Advise the suspect that it is a misdemeanor to use or display medical marijuana in a manner or place that is open to the public and note such advice in the *General Offense Report*.
- i. Inform the patient or designated provider that they should review the Washington State Medical Marijuana Act and obtain the required qualifying documents if they were unable to produce them.
- j. Dual Coverage Under the Statute.
 - (1) If a qualifying patient also asserts that he/she is also a designated provider to one other qualifying patient, and can provide the name and contact information of the other qualifying patient, the authorized supply of marijuana for 1 individual should be doubled to 30 plants and no more than 48 ounces (1,268 grams) of useable marijuana. However, if the patient cannot supply the identification information of the other patient, the patient/provider will only be provided with the amount authorized for 1 patient. In any event, by law, the collective garden cannot exceed 45 plants and 72 ounces of harvested/useable marijuana.

E. **Apparent Non-Compliance with the Law**

- 1. If the patient or designated provider asserts protection under the Medical Marijuana Act and possesses a quantity of marijuana and/or plants clearly in excess of the definition of sixty (60) day supply or the authorized supply for a collective garden, appropriate steps should be taken to seize the usable marijuana and plants that are in excess of the definition of personal use. Refer the case to the Office of the King County Prosecuting Attorney to determine if criminal charges should be filed.
 - a. Serve the Medical Marijuana user/claimant a *Legal Notice to Medical Marijuana Patient* (form 18.8) and/or the provider a *Legal Notice to Designated Medical Marijuana Provider* (form 18.7). The forms are available online or via the Quartermaster Unit (triplicate version). Online versions of the both forms are available for collective gardens, they are form 18.8b and 18.7b.
 - (1) Attempt to obtain a signature on the form(s) from the user/claimant and/or the provider.
 - (2) If there is a refusal to sign, make note of this fact on the form, an unsigned form is acceptable.
 - (3) Provide the user/claimant and/or provider with a copy of the form.
 - (4) The original copy of the form shall be forwarded to the Records Section.

- (5) Inform the patient or designated provider that they should review the Washington State Medical Marijuana Act and obtain the required qualifying documents if they are unable to produce them.
2. Possession of Medical Marijuana
 - a. Provide the claimant with approximately twenty-four (24) ounces (684 grams) of usable marijuana by filling two 15" x 18" air-dry bags with marijuana.
 - b. Take a random sample of the marijuana by filling one 9" by 12" air-dry bag for evidence.
 - c. The excess marijuana (excluding the claimant's twenty-four (24) ounces and the random sample) shall be placed in evidence for destruction.
 - d. Make a note if the person claims medical marijuana protection but has no documentation; share this with follow-up detectives and the prosecutor.
 - e. Complete a *General Offense Report* and forward a copy to the Narcotics Section.
 - f. Advise the suspect that it is a misdemeanor to use or display medical marijuana in a manner or place that is open to the public and note such advice in the *General Offense Report*.
 - g. Dual Coverage Under the Statute.
 - (1) If a qualifying patient also asserts that he/she is also a designated provider to one other qualifying patient, and can provide the name and contact information of the other qualifying patient, the authorized supply of marijuana for 1 individual should be doubled to 30 plants and no more than 48 ounces (1,268 grams) of useable marijuana. However, if the patient cannot supply the identification information of the other patient, the patient/provider will only be provided with a sixty-day supply for his/her personal use.
3. Medical Marijuana Grow Operation (that is not a collective garden)
 - a. Seize all but fifteen (15) marijuana plants.
 - (1) If the patient or designated provider is present, then they may select the fifteen (15) marijuana plants that will remain at the location.
 - (2) If the suspect is not present at the grow operation and the investigating officer or detective has knowledge that the suspect is a patient or designated provider, then fifteen (15) plants in various stages of growth (including mature plants if present) should be left at the scene.
 - b. Officers will photograph the entire quantity of marijuana to illustrate the amount, size of any plants, the presence of paraphernalia, and any other indication of usage. If the marijuana is in plant form, officers will photograph the plants and include in the photograph a measurement device to illustrate

approximate size. Officers will count the number of plants, photograph and note all equipment used for growing, harvesting, packaging or using marijuana.

- (1) Submit the photographic memory card to the Photographic Services Unit using the *Photographic Media Envelope* (form 50) under the General Offense Number.
 - (a) The photographic memory card will be entered into the Property Report with the Property Status "SPD Photos." Officers will not create a barcode for the *Photographic Media Envelope* (form 50) or list the photographic memory card as evidence.
 - (b) The Photographic Services Unit will produce prints of the images, or a copy of the images on a CD or both, at the request of the investigating officer.
- c. Count the number of plants and note all equipment used for growing, harvesting, packaging or using marijuana.
- d. Provide the claimant with approximately twenty-four (24) ounces (684 grams) of usable marijuana by filling two 15" x 18" air-dry bags with the substance. DO NOT harvest 24-ounces from growing marijuana plants for the claimant or provider because fresh marijuana does not meet the definition of usable (dried) marijuana.
- e. Take a random sample of the marijuana by filling one 9" by 12" air-dry bag for evidence and for use at trial.
- f. The excess marijuana (excluding the claimant's 15 plants, 24 ounces, and the random sample) shall be seized and placed in evidence for destruction.
- g. Leave all of the grow equipment at the scene, unless removal is authorized by a Narcotics supervisor.
- h. Make a note if the person claims medical marijuana protection but has no documentation; share this with follow-up detectives and the prosecutor.
- i. Complete a *General Offense Report* and forward a copy to the Narcotics Section.
- j. Advise the suspect that it is a misdemeanor to use or display medical marijuana in a manner or place that is open to the public and note such advice in the *General Offense Report*.
- k. Dual Coverage Under the Statute.
 - (1) If a qualifying patient also asserts that he/she is also a designated provider to one other qualifying patient, and can provide the name and contact information of the other qualifying patient, the sixty-day supply of marijuana should be doubled to 48 ounces of usable marijuana (1,268 grams) and no more than thirty (30) plants. However, if the patient cannot supply the identification information of the other patient, the

patient/provider will only be provided with a sixty-day supply for his/her personal use.

- l. If the patient or designated provider is present, then they may select the thirty (30) marijuana plants that will remain at the location.

4. Collective Gardens

- a. Seize all but the authorized supply of marijuana plants (typically the authorized supply is 45 plants for a collective garden, however if there are less than 3 qualifying patients the supply can be as low as 30 or 15 plants, however if a patient is also a designated provider then the authorized supply can double for that person).
- b. If the patient or designated provider is present, then they may select the fifteen (15) marijuana plants that will remain at the location.
- c. If the suspect is not present at the collective garden and the investigating officer or detective has knowledge that the suspect is a patient or designated provider, then the authorized supply of plants in various stages of growth (including mature plants if present) should be left at the scene.
- d. Officers will photograph the entire quantity of marijuana to illustrate the amount, size of any plants, the presence of paraphernalia, and any other indication of usage. If the marijuana is in plant form, officers will photograph the plants and include in the photograph a measurement device to illustrate approximate size. Officers will count the number of plants, photograph and note all equipment used for growing, harvesting, packaging or using marijuana.
- e. Submit the photographic memory card to the Photographic Services Unit using the *Photographic Media Envelope* (form 50) under the General Offense Number. The photographic memory card will be entered into the Property Report with the Property Status "SPD Photos." Officers will not create a barcode for the *Photographic Media Envelope* (form 50) or list the photographic memory card as evidence. The Photographic Services Unit will produce prints of the images, or a copy of the images on a CD or both, at the request of the investigating officer.
- f. Count the number of plants and note all equipment used for growing, harvesting, packaging or using marijuana.
- g. Provide the claimant(s) with the authorized supply for a collective garden (24 ounces (684 grams) of usable marijuana per patient by filling two 15" x 18" air-dry bags with the substance, do not exceed the maximum of 72 ounces (2,052 grams) for one collective garden. DO NOT harvest from growing marijuana plants for the claimant or provider because fresh marijuana does not meet the definition of usable (dried) marijuana.
- h. Take a random sample of the marijuana by filling one 9" by 12" air-dry bag for evidence and for use at trial.

- i. The excess marijuana (excluding the claimant's authorized supply) shall be seized and placed in evidence for destruction.
- j. Leave all of the grow equipment at the scene, unless removal is authorized by a Narcotics supervisor.
- k. Make a note if the person claims medical marijuana protection but has no documentation; share this with follow-up detectives and the prosecutor.
- l. Complete a *General Offense Report* and forward a copy to the Narcotics Section.
- m. Advise the suspect that it is a misdemeanor to use or display medical marijuana in a manner or place that is open to the public and note such advice in the *General Offense Report*.
- n. Dual Coverage Under the Statute.
 - (1) If a qualifying patient also asserts that he/she is also a designated provider to one other qualifying patient, and can provide the name and contact information of the other qualifying patient, the authorized supply of marijuana for 1 individual should be doubled to 30 plants and no more than 48 ounces (1,268 grams) of useable marijuana. However, if the patient cannot supply the identification information of the other patient, the patient/provider will only be provided with the amount authorized for 1 patient. In any event, by law, the collective garden cannot exceed 45 plants and 72 ounces of harvested/useable marijuana.
- o. If the patient or designated provider is present, then they may select the authorized supply of marijuana plants that will remain at the location.

F. Screening Medical Marijuana Incidents with Narcotics

- 1. It is recommended that officers and supervisors screen medical marijuana incidents with a Narcotics Section sergeant prior to taking action, including leaving the scene, booking the suspect, or seizing marijuana.

G. Medical Marijuana Suspects who are Seriously Ill

- 1. Avoid booking individuals who are seriously ill, because it is unlikely that the King County Jail will accept them. If there are no outstanding arrest warrants, the best option is to investigate and release.

H. Narcotics Section sergeants are available 24 hours a day and may be contacted via SPD Communications Section.